

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BILLY RAY SMITH,

Petitioner

v.

WARDEN WILLIAM A. SCISM,

Respondent

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CIVIL NO. 4:10-CV-1340

(Judge McClure)

MEMORANDUM

August 12, 2010

I. INTRODUCTION

Petitioner Billy Ray Smith (“Petitioner” or “Smith”), an inmate presently confined at the Low Security Correctional Institution at Allenwood (“LSCI Allenwood”), initiated the above action *pro se* by filing a petition for writ of habeas Corpus (“petition”) under the provisions of 28 U.S.C. § 2241. (Rec. Doc. No. 1.) He also has filed an application for leave to proceed *in forma pauperis*. (Rec. Doc. No. 2.)

In a Memorandum and Order dated July 27, 2010, we observed that Smith’s statement of the grounds for relief in his petition was incoherent in that he included a series of allegations without any supporting facts. (Rec. Doc. No. 3.) Nevertheless, we gave him the opportunity to file an amended petition clearly setting forth facts in

support of his grounds for relief on or before August 10, 2010. (*Id.*) On August 5, 2010, Smith filed an amended petition. (Rec. Doc. No. 4.)

For the reasons set forth below, we will grant Smith's request to proceed *in forma pauperis* for the sole purpose of filing this action, and dismiss the amended petition.

II. DISCUSSION

Smith's amended petition also is not a model of clarity. Smith again fails to clearly state facts in support of his string of allegations. Nevertheless, we have gleaned from his amended petition that he is challenging the validity of the charges that led to his 1992 conviction and current incarceration. He states repeatedly that his actual name is "Billy Ray Smith," but that he fraudulently has been identified as "Billy Rae Smith" in some sort of "cover up," and thus he claims that he is being illegally detained. (*See id.*) He alleges that "Billy Ray Smith" is actually innocent of the hate crime and crack cocaine charges for which he was convicted.¹ (*See id.*)

To the extent that Smith is challenging his conviction itself on the basis that he is not the individual who committed the charges for which he was convicted, he cannot pursue that challenge through a petition for writ of habeas corpus. The remedy

¹In his original petition, Smith states that he was sentenced on February 18, 1992 by the United States District Court for the District of Columbia to a term of imprisonment of 240 months following his conviction of unlawful distribution of cocaine base. (Rec. Doc. No. 1 at 1.)

for a federal criminal defendant claiming that his conviction and/or sentence was imposed in violation of the Constitution or laws of the United States is to file a motion with the court which imposed his sentence to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002); *In re Dorsainvil*, 119 F.3d 245, 251 (3d Cir. 1997). A defendant can challenge a conviction or sentence under § 2241 only if a § 2255 motion is “inadequate or ineffective to test the legality of his detention.” *See* 28 U.S.C. § 2255(e); *see also Okereke*, 307 F.3d at 120; *In re Dorsainvil*, 119 F.3d at 251. Habeas corpus under § 2241 is “reserved for rare cases,” and therefore, this “safety-valve” provision of § 2255 must be strictly construed. *In re Dorsainvil*, 119 F.3d at 250, 251.

Smith has not made any allegations suggesting that a § 2255 motion is inadequate or ineffective to pursue his challenge to his conviction and sentence. The mere fact that Smith is unable to meet the gatekeeping requirements to file a § 2255 motion does not make it an inadequate or ineffective remedy. *In re Dorsainvil*, 119 F.3d at 251. Accordingly, we must dismiss the instant petition for lack of jurisdiction. An appropriate Order follows.

s/ James F. McClure, Jr.
JAMES F. McCLURE, JR.
United States District Judge

s/ James F. McClure, Jr.
JAMES F. McCLURE, JR.
United States District Judge